

**United States Department of Labor  
Employees' Compensation Appeals Board**

R.F., Appellant	)	
	)	
and	)	<b>Docket No. 18-0408</b>
	)	<b>Issued: August 10, 2018</b>
DEPARTMENT OF THE AIR FORCE,	)	
SEYMOUR JOHNSON AIR FORCE BASE, NC,	)	
Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 18, 2017 appellant filed a timely appeal from a July 28, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish a right shoulder and arm injury causally related to the accepted November 23, 2015 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On September 12, 2016 appellant, then a 62-year-old school liaison officer, filed a traumatic injury claim (Form CA-1) alleging that he injured his right shoulder and arm when he set up and removed 200 chairs and tables on November 23, 2015 while in the performance of duty.

By development letter dated September 21, 2016, OWCP informed appellant that additional evidence was needed to establish his claim. It advised him that he should submit a medical report from his physician with an explanation as to how the alleged work incident caused or aggravated the claimed condition. OWCP afforded appellant 30 days to submit the necessary evidence.

In a September 21, 2016 statement, appellant reported that on November 19 and 23, 2015 he had to set up chairs and tables for meetings, and thereafter on November 24, 2015 he noticed pain and stiffness in his right arm. He also indicated that on November 25, 2015, while boarding an airplane for the Thanksgiving holiday, he felt a sharp pain in his right shoulder when he lifted his suitcase into the overhead bin. Appellant reported that he continued to experience pain and saw his family physician on December 29, 2015 who diagnosed bursitis and referred him for physical therapy. He indicated that he wanted to submit the claim prior to his retirement on September 30, 2016.

W.J., a coworker, provided a witness statement dated September 22, 2016. He indicated that on November 23, 2015 he, along with appellant and another coworker, had to set up a meeting which required placing approximately 200 chairs and large tables for the event. W.J. noted that appellant mentioned that his arm and shoulder were hurting during the set up process.

On an OWCP claim questionnaire, signed on October 18, 2016, appellant indicated that he had been seen by Dr. Donald K. Clarke, a family practice physician, on December 29, 2015 for continuing right shoulder and upper arm pain and stiffness. He related that he had never experienced right shoulder pain prior to the employment injury.

In an October 18, 2016 report, Dr. Clarke indicated that he saw appellant on December 29, 2015 for shoulder pain. He noted that appellant advised him that the injury occurred on November 23, 2015 while lifting furniture at work. Dr. Clarke described examination findings of right shoulder tenderness and pain with abduction against resistance, and good range of motion and stability. He diagnosed right shoulder bursitis and recommended physical therapy. Dr. Clarke reported that he next saw appellant again on February 1, 2016 when appellant reported continued pain when using his computer, and saw him a third time on September 7, 2016 when he reported worsening shoulder pain. Shoulder examination at that time demonstrated increased tenderness and pain with movement. Dr. Clarke referred appellant to orthopedics and reported that a magnetic resonance imaging (MRI) scan was performed. He concluded that appellant's diagnosed bursitis was an overuse syndrome, and that appellant's description of the reported work incident was consistent with his symptoms and diagnosis. Dr. Clarke attached unsigned treatment notes. On September 7, 2016 he noted a history that appellant helped someone move over the weekend and subsequently had a lot of pain.

A September 26, 2016 MRI scan of the right shoulder demonstrated minimal undersurface fraying/tiny partial tear of the anterior fibers of the supraspinatus at insertion, no full-thickness rotator cuff tear, probable subacromial, subdeltoid bursitis, question tiny amount of calcific tendinitis within the subscapularis tendon, moderate acromioclavicular joint degenerative osteoarthritis, probable superior labral tear, and diminutive posterior labrum.

By decision dated October 26, 2016, OWCP found that the November 23, 2015 employment incident occurred as alleged, but the medical evidence of record was insufficient to establish causal relationship between the accepted incident and the diagnosed right shoulder conditions.

On November 1, 2016 OWCP noted that it had not reviewed all of the evidence of record when it issued the October 26, 2016 decision. On November 4, 2016 appellant requested reconsideration.

In a subsequent merit decision dated December 12, 2016, OWCP reviewed all evidence submitted. It found that on November 23, 2015 appellant was required to stack and replace chairs at work. However, OWCP found Dr. Clarke's October 18, 2016 report contained insufficient rationale to establish that this incident caused the diagnosed shoulder bursitis because he also referenced computer use and indicated that bursitis was an overuse syndrome.

On May 25, 2017 appellant requested reconsideration. He submitted reports from Dr. Gregory S. Bauer, a Board-certified orthopedic surgeon, who first saw appellant on September 19, 2016 and reported a history that appellant first felt right shoulder pain when he unloaded multiple chairs and tables at work on November 23, 2015. Dr. Bauer described examination findings of mild tenderness over the biceps tendon and greater tuberosity and limited right shoulder range of motion. He reviewed x-rays that showed mild narrowing of the glenohumeral joint. Dr. Bauer diagnosed right shoulder pain secondary to adhesive capsulitis. On October 3, 2016 he reviewed the right shoulder MRI scan, noting no apparent rotator cuff tear and subacromial and subdeltoid bursitis and likely adhesive capsulitis.

On October 31, 2016 appellant was seen by Dr. Hector M. Pedraza, a Board-certified orthopedist and associate of Dr. Bauer, who reported that appellant's shoulder pain had improved.

On May 11, 2017 Dr. L. Davis Frederick, Board-certified in orthopedic surgery and an associate of Dr. Bauer, noted that appellant's shoulder had improved with conservative care, which was continued.

Appellant also forwarded photographs of the chairs and tables that he maintained caused his injury.

By decision dated July 28, 2017, OWCP reviewed the merits of appellant's claim and denied modification of the prior decisions. It found that the medical evidence of record did provide a rationalized medical opinion causally relating his diagnosed conditions to the accepted employment incident.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>4</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>5</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>6</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>7</sup>

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder and arm injury causally related to the accepted November 23, 2015 employment incident.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically-sound explanation of how the claimed work

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<sup>2</sup> *Id.*

<sup>3</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

<sup>4</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>5</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>7</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

event caused or aggravated the claimed condition.<sup>8</sup> The Board finds that no physician did so in this case.

The September 26, 2016 MRI scan provided diagnostic findings; however, this report is insufficient to establish appellant's claim because it did not provide an opinion on the causal relationship of the conditions found on diagnostic testing and the accepted work injury. Therefore, this report is of limited probative value in establishing causal relationship.<sup>9</sup>

Likewise, Dr. Bauer, Dr. Pedraza, and Dr. Frederick did not include an opinion as to the cause of any diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>10</sup>

In his report dated October 18, 2016, Dr. Clarke noted that on December 29, 2015 appellant reported that right shoulder pain occurred on November 23, 2015 while lifting furniture at work. He diagnosed right shoulder bursitis. When he next saw appellant on February 1, 2016, Dr. Clarke noted appellant's complaint of continued pain with using his computer, and that he reported worsening shoulder pain when seen on September 7, 2016. He concluded that appellant's diagnosed bursitis was an overuse syndrome, adding that appellant's description of the reported work incident was consistent with his symptoms and diagnosis. Dr. Clarke, however, did not provide specific rationale as to how the November 23, 2015 employment incident caused appellant's right upper extremity condition. Thus, his opinion on causal relationship fails to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how the moving chairs and tables on November 23, 2015 caused a right shoulder condition, which he described as caused by overuse.<sup>11</sup> Moreover, appellant described several incidents when he felt pain lifting a suitcase and also reported increased pain after he helped someone to move.

Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>12</sup> The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident of employment.<sup>13</sup>

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<sup>8</sup> *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

<sup>9</sup> See *Michael E. Smith*, 50 ECAB 313 (1999); *S.B.*, Docket No. 17-0254 (issued July 20, 2018) (diagnostic studies, on their own, are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions).

<sup>10</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>11</sup> *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

<sup>12</sup> *D.E.*, Docket No. 17-1874 (issued February 9, 2018).

<sup>13</sup> *Supra* note 5.

It is appellant's burden of proof to establish that a diagnosed condition is causally related to the accepted November 23, 2015 employment incident. As he submitted insufficient evidence to establish an injury caused by his accepted employment incident, he has failed to meet his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a right shoulder and arm injury causally related to the accepted November 23, 2015 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board